IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(C).No. 31205 of 2006(M)

PETITIONER:

ST.PHILIP NERI BHAVAN,
CHIPPILITHODE, KODENCHERY, ADIVARAM P.O.,
KOZHIKODE, REPRESENTED BY SUPERIOR SR. LISETTA.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B.KURIAN
SRI.K.T.THOMAS
SMT.TULASI PANICKER

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT,
REVENUE (SPECIAL CELL) DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE TAHSILDAR,
KOZHIKODE TALUK, TALUK OFFICE, KOZHIKODE.

3. THE VILLAGE OFFICER,
KODENCHERY VILLAGE, KODENCHERY P.O.,
KOZHIKODE.

BY GOVERNMENT PLEADER SRI. TEK CHAND

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 31205/2006 M

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE SALE DEED NO. 1821/2000 DT. 7/7/00.

EXT.P2. COPY OF THE PLAN OF THE BUILDING.

EXT.P2A. COPY OF THE PLAN OF THE BUILDING.

EXT.P3. COPY OF THE RETURN UNDER THE BUILDING TAX ACT BY THEPETITIONER BEFORE THE R2.

EXT.P4. COPY OF THE NOTICE DT. 17/09/2003 BY THE R2 TO THE PETITIONER.

EXT.P5. COPY OF THE ORDER DT. 5/6/2006 BY THE R1.

EXT.P6. COPY OF THE ORDER DT. 26/09/2006 BY THE R2.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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V. GIRI ,J.

WP(C).NO.31205 of 2006

Dated this the 15th day of October, 2007

JUDGMENT

One St.Philip Neri Bhavan, Chippilithode, Kodenchery, Adivaram in Kozhikode District, represented by its Mother Superior is the petitioner in this writ petition. *"Sisters of Philip Neri Bhavan"* is a religious congregation of Nuns under the Catholic Church. The members of the congregation live in convents in small communities and one such convent is situated at Chippilithode, Kodencherry. The petitioner which is a convent had purchased land under Ext.P1 sale deed and a building with a plinth area of 420 sq. metres in two floors was constructed. When the authorities under the Building Tax Act required the owner of the building to file the return, they filed return under Ext.P3, in which they claimed an exemption in terms of Section 3 (1)(b) on the ground that the building is constructed by a religious organisation coming under the Thamarassery Diocese and that it is also registered as a Charitable Institution.

2. The Government had considered the claim and it seems that the Tahsildar had conducted a site inspection. The Tahsildar reported that the building is not used for any educational or

health activities. Though there was a claim by the sisters that a Nursery School was functioning in the ground floor of the building, it was found to be functioning in another building. On the basis of the report of the Tahsildar that no charitable, religious or educational activities are carried on the building, though it was noted that the inmates of the building are Nuns, the Government rejected the claim under Section 3(1)(b) of the Kerala Building Tax Act, 1975. The same is under challenge in this writ petition.

3. In a counter affidavit filed by the State, it is claimed that the building was inspected on 8.2.2006 by the Junior Superintendent(BT) of the Taluk Office, Kozhikode along with the Village Officer in the presence of Sister Luciya. No educational institution or dispensary was being run in the building. Though the sister claimed that a Nursery School under the title *"Samandari"* was functioning in the building, the claim was found to be not true. There was no evidence of any charitable activity being carried on in the building. What was found was only a Chapel having a plinth area of 28.98 $M^{2.}$

4. Exemption from payment of building tax under the

Building Tax Act is available to buildings used principally for religious, charitable or Educational purposes or as factories or workshop, **(**3(1)(b) of the Act**)** or charitable purposes including medical relief for the poor. Apparently, though there was a claim by the sisters of the convent that a free dispensary was being run in one portion of the building, the same was not found to be correct, according to the respondents, at the time of local inspection. Learned counsel for the petitioner points out that there was a gap of about 3 years between the date on which return was filed and the local inspection done by the Junior Superintendent. Therefore, by the time, the dispensary had been shifted to another building. So is the case of the Nursery as well.

5. In my view, the precise nature of the building in question has to be considered by the Government. It has not been considered properly in Ext.P5 order. At one point the Government notes that the inmates of the building are Nuns. It is also noted that there is a Chapel. It is not disputed that the building is being used as a convent. Obviously, the inmates are persons who are devoted to a religious life. Whether charitable activities are also undertaken by them, is a different aspect. Even

if the building is used principally for religious purposes, the petitioner would be entitled to claim exemption in terms of Section 3(1)(b) of the Act. The issue requires a fresh consideration by the Government.

6. In the circumstances, the writ petition is allowed. Ext.P5 is set aside. The petitioners may file a fresh representation before the Government stating precisely the nature of the activity and principal use of the building in question. Such representation shall be filed within a period of two months from the date of receipt of a copy of this judgment. The Government shall, after hearing a representative of the petitioner, take a fresh decision, within a period of two months thereafter.

V. GIRI, JUDGE

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